

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDRE THOMAS,

Plaintiff,

v.

ENCINAS, et al.,

Defendants.

Case No. 1:21-cv-01321-BAK (BAM) (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE

14-DAY DEADLINE

Plaintiff Andre Thomas is a former inmate proceeding¹ *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

I. BACKGROUND

On November 12, 2021, Plaintiff filed a Notice of Change of Address, providing an address in San Diego, California. (Doc. 8.)

On January 6, 2022, the Court issued a Notice of Temporary Magistrate Judge Referral. (Doc. 9.) The notice was served on Plaintiff at his address of record with the Court. (*Id.*) On January 13, 2022, the notice was returned by the U.S. Postal Service marked undeliverable and unable to forward.

¹ At the time Plaintiff initiated this action, he was incarcerated at the Kings County Jail in Hanford. (Doc. 1.)

1 After more than 63 days passed, on April 11, 2022, the Court issued an Order to Show
2 Cause (OSC) why the action should not be dismissed for a failure to prosecute. (Doc. 10.)
3 Plaintiff was afforded 21 days within which to respond to the OSC. (*Id.*) The Order was served on
4 Plaintiff at his address of record with the Court. (*Id.*) On April 25, 2022, the OSC was returned by
5 the U.S. Postal Service marked undeliverable and unable to forward.

6 **II. DISCUSSION**

7 Plaintiff is required to keep the Court apprised of his current address at all times. Local
8 Rule 183(b) provides:

9 **Address Changes.** A party appearing in propria persona shall keep the Court and
10 opposing parties advised as to his or her current address. If mail directed to a
11 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and
12 if such plaintiff fails to notify the Court and opposing parties within sixty-three (63)
days thereafter of a current address, the Court may dismiss the action without
prejudice for failure to prosecute.

13 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to
14 prosecute.²

15 According to the Court's docket, Plaintiff's address change was due no later than March
16 24, 2022. When Plaintiff did not file a change of address, the Court issued an OSC directing
17 Plaintiff to respond within 21 days. To date, Plaintiff has failed to file a change of address, did
18 not file a response to the OSC, and has not otherwise been in contact with the Court.

19 “In determining whether to dismiss an action for lack of prosecution, the district court is
20 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation;
21 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
22 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
23 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and
24 citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re*
25 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).
26 These factors guide a court in deciding what to do and are not conditions that must be met in
27

28 ² Courts may dismiss actions *sua sponte* under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

2 Given Plaintiff's failure to respond to this Court's order, the expeditious resolution of
3 litigation and the Court's need to manage its docket weigh in favor of dismissal. *In re PPA*, 460
4 F.3d at 1227. More importantly, given the Court's apparent inability to communicate with
5 Plaintiff, there are no other reasonable alternatives available to address Plaintiff's failure to
6 prosecute this action and his failure to apprise the Court of his current address. *Id.* at 1228–29;
7 *Carey*, 856 F.2d at 1441. The Court will therefore recommend that this action be dismissed based
8 on Plaintiff's failure to prosecute this action.

9 **III. CONCLUSION AND RECOMMENDATION**

10 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
11 district judge to this action.

12 Furthermore, the Court HEREBY RECOMMENDS that this action be dismissed, without
13 prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b).

14 These Findings and Recommendations will be submitted to the United States District
15 Judge assigned to the case, under the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
16 **days** after being served with these Findings and Recommendations, Plaintiff may file written
17 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
18 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
19 specified time may result in the waiver of the “right to challenge the magistrate’s factual
20 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
21 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.
23

24 Dated: April 26, 2022

25 /s/ *Barbara A. McAuliffe*
26 UNITED STATES MAGISTRATE JUDGE
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